

REDISTRICTING SOFTWARE AND SUPPORT AGREEMENT

Relating to RFP No. 2010-02

1. DEFINITIONS

As used in this AGREEMENT:

- 1.1 "AGREEMENT" means this "Redistricting Software and Support Agreement" between OLRGC and VENDOR.
- 1.2 "LEGISLATURE" means the Utah State Legislature.
- 1.3 "OLRGC" means the Office of Legislative Research and General Counsel, a staff office of the LEGISLATURE.
- 1.4 "RFP" means the Request for Proposals to the Utah State Legislature, issued by the OLRGC, for "Redistricting Software and Support, RFP No. 2010-02," and all addenda thereto.
- 1.5 "REDISTRICTING SOFTWARE" means (insert name and description of software).
- 1.6 "SOFTWARE SUPPORT SERVICES" means the software support services described in Section 3.2 of this AGREEMENT.
- 1.7 "VENDOR" means (insert name of VENDOR).

2. PARTIES

This AGREEMENT is between the LEGISLATURE and VENDOR.

3. DUTIES OF VENDOR

In exchange for the consideration described in Section 4 of this AGREEMENT, VENDOR shall:

- 3.1 On or before _____, provide to OLRGC _____ complete and fully functioning copies of its REDISTRICTING SOFTWARE and _____ licenses for unlimited use of the REDISTRICTING SOFTWARE.
- 3.2 Provide support to OLRGC for the REDISTRICTING SOFTWARE as follows:

(Insert particulars of software support here).

4. PAYMENT

- 4.1** In exchange for the timely provision of the REDISTRICTING SOFTWARE and licenses described in Section 3 of this AGREEMENT, the SOFTWARE SUPPORT SERVICES described in Section 3.2 of this AGREEMENT, and fulfillment of the other terms and conditions of this AGREEMENT, OLRGC agrees to pay VENDOR (insert amount and method of billing and payment here).
- 4.2** The amount that OLRGC is required to pay VENDOR under this Section 4 of this AGREEMENT is the entire amount that OLRGC (or the LEGISLATURE) is required to pay VENDOR for the software, licenses, goods, and services described in this AGREEMENT.

5. INDEPENDENT CONTRACTOR

- 5.1** VENDOR is an independent contractor and is not authorized, expressly or by implication, to bind the LEGISLATURE, OLRGC, the State of Utah, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE or the State of Utah to any agreement, settlement, liability, or understanding or to perform any act as agent for the LEGISLATURE, OLRGC, the State of Utah, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE or the State of Utah.
- 5.2** VENDOR is solely responsible to pay for all of VENDORS's materials, travel, and expenses and to pay each employee or subcontractor of VENDOR all wages, payments, expenses, fees, taxes, costs, insurance, and benefits of any kind relating to an employee or subcontractor of VENDOR.

6. REPRESENTATIONS

VENDOR represents that it has full legal rights to provide OLRGC with the REDISTRICTING SOFTWARE and the licenses to use the REDISTRICTING SOFTWARE.

7. ASSIGNMENT PROHIBITED

VENDOR may not assign this AGREEMENT, nor any duty or benefit relating to this AGREEMENT, without the prior written permission of OLRGC.

8. TERMINATION OF AGREEMENT

(this section may need to be modified if the length of time that the REDISTRICTING SOFTWARE licenses are valid and the length of time that SOFTWARE SUPPORT SERVICES are provided are different.)

- 8.1** This AGREEMENT terminates on _____.
- 8.2** This AGREEMENT may be terminated at any time before _____, if any of the

following occur:

- 8.2.1** OLRGC and VENDOR agree, in writing, to terminate this AGREEMENT at an earlier date.
- 8.2.2** If either party materially breaches this AGREEMENT and, following the breach:
 - 8.2.2.1** the non-breaching party gives written notice of the breach to the breaching party; and
 - 8.2.2.2** at least seven days after the day on which the breaching party receives the notice described in Section 8.2.2.1 of this AGREEMENT, the non-breaching party sends a written notice of termination to the breaching party, unless, before the end of the seven-day period described in this Section 8.2.2.2 of this AGREEMENT, the breaching party cures the breach.
- 8.3** A material breach by VENDOR includes, but is not limited to:
 - 8.3.1** Failure to timely provide the REDISTRICTING SOFTWARE and the licenses to use the REDISTRICTING SOFTWARE.
 - 8.3.2** Failure to provide the SOFTWARE SUPPORT SERVICES described in this AGREEMENT.
 - 8.3.3** Making a misrepresentation in, or under, this AGREEMENT.
 - 8.3.4** Making a misrepresentation in response to the RFP.
- 8.4** If this AGREEMENT terminates under Section 8.1 of this AGREEMENT, VENDOR is not relieved of VENDOR's obligations under Sections 5, 7, 8, and 10 of this AGREEMENT.
- 8.5** If this AGREEMENT terminates under Section 8.2.1 of this AGREEMENT:
 - 8.5.1** VENDOR is not relieved of VENDOR's obligations under Sections 5, 7, 8, and 10 of this AGREEMENT; and
 - 8.5.2** Payment and other terms relating to the software, licenses, goods, and services described in this AGREEMENT will be expressed in the written document described in Section 8.2.1 of this AGREEMENT.
- 8.6** If this AGREEMENT terminates under Section 8.2.2 of this AGREEMENT due to a breach by VENDOR:
 - 8.6.1** VENDOR is not relieved of VENDOR's obligations under Sections 3, 5, 6, and 8

through 15 of this AGREEMENT; and

8.6.2 Neither OLRGC nor the LEGISLATURE is required to pay, and VENDOR is not entitled to receive, the payment described in Section 4 of this AGREEMENT, or any payment.

8.7 Termination under Section 8.2.2 of this AGREEMENT does not relieve either party of liability for any default prior to the termination.

9. GOVERNING LAW

This AGREEMENT shall be construed in accordance with, and governed by, the law of the State of Utah, without reference to principles governing choice or conflicts of laws. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this AGREEMENT or the breach of this AGREEMENT. Venue shall be in Salt Lake City, Utah, in the Third Judicial District Court for Salt Lake County.

10. EQUAL OPPORTUNITY

VENDOR agrees to abide by the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disabilities. VENDOR further agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

11. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this AGREEMENT is illegal and void does not affect the legality and enforceability of any other provision of this AGREEMENT, unless the provisions are mutually dependent.

12. INCORPORATION OF PROVISIONS OF RFP

The provisions of the RFP are hereby incorporated into this AGREEMENT by reference. If any conflict exists between the RFP and this AGREEMENT, the terms and conditions of this AGREEMENT prevail.

13. MERGER

This AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter contained in this AGREEMENT. There are no covenants, terms, or conditions, express or implied, written or unwritten, that govern the subject matter of this AGREEMENT, except as expressly described in this AGREEMENT. This AGREEMENT supersedes all prior

agreements between the parties relating to all or part of the subject matter contained in this AGREEMENT.

14. MODIFICATION OF AGREEMENT

This AGREEMENT may be modified only in a written document signed by John Q. Cannon or by the Director of the OLRGC, on behalf of the OLRGC, and (insert name here) (or such other person certified as having the authority to bind VENDOR), on behalf of VENDOR.

15. AUTHORITY TO BIND

VENDOR and the person who signs this AGREEMENT on behalf of VENDOR represent that the person who signs this AGREEMENT has the authority to bind VENDOR, and does, by signing this AGREEMENT, bind VENDOR to the terms and conditions of this AGREEMENT.

In witness whereof the parties have executed this AGREEMENT as follows:

On behalf of VENDOR:

On behalf of LEGISLATURE:

John Q. Cannon
Utah's State Liaison for the
2010 Census Redistricting Data Program